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24 BOLDFACE GROUP, INC. and
25 BOLDFACE LICENSING + BRANDING

26 UNITED STATES DISTRICT COURT
27 CENTRAL DISTRICT OF CALIFORNIA

28 CHROMA MAKEUP STUDIO
LLC,

Plaintiff,

vs.

BOLDFACE GROUP, INC., and
BOLDFACE LICENSING +
BRANDING,

Defendant.

CASE NO. CV 12-09893 ABC (PJWx)

**JOINT STIPULATION REQUESTING
ENTRY OF PROTECTIVE ORDER**

Discovery Cut-Off: December 6, 2013
Motion Cut-Off: January 6, 2013
Trial Date: April 22, 2013

Action Filed: November 19, 2012

[Magistrate Judge: Hon. Patrick J. Walsh]

HON. AUDREY B. COLLINS

1 WHEREAS discovery is under way in the above-entitled action and
2 discovery requests may call for the production of materials that constitute
3 confidential information and/or trade secrets under Fed. R. Civ. P. 26(c)(1)(G);

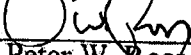
4 WHEREAS the parties believe that a protective order is necessary to protect
5 their confidential information and trade secrets, as well as the confidential
6 information and trade secrets of third parties;

7 NOW, WHEREFORE, Plaintiff CHROMA MAKEUP STUDIO LLC and
8 Defendants BOLDFACE GROUP, INC. and BOLDFACE LICENSING +
9 BRANDING jointly request that the Court enter the attached [Proposed] Stipulated
10 Protective Order.

11
12 SO STIPULATED.

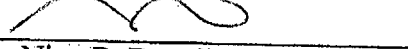
13
14 Dated: April 10, 2013

BROWNE GEORGE ROSS LLP
Peter W. Ross
Keith J. Wesley
Jonathan L. Gottfried

15
16
17 By: 
18 Peter W. Ross
19 Attorneys for Plaintiff Chroma Makeup
20 Studio LLC

21 Dated: April 10, 2013

GREENBERG TRAURIG, LLP

22
23
24 By: 
25 Nina D. Boyajian
26 Attorneys for Defendants Boldface Group,
27 Inc. and Boldface Licensing + Branding
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8 Attorneys for Plaintiff
CHROMA MAKEUP STUDIO LLC
9

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
12

13 CHROMA MAKEUP STUDIO LLC,

14 Plaintiff,

15 vs.

16 BOLDFACE GROUP, INC., and
17 BOLDFACE LICENSING +
BRANDING,

18 Defendants.
19
20
21
22
23

CASE NO. CV 12-09893 ABC (PJWx)

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

Discovery Cut-Off: December 6, 2013
Motion Cut-Off: January 6, 2013
Trial Date: April 22, 2013

Action Filed: November 19, 2012

[Magistrate Judge: Hon. Patrick J. Walsh]

Hon. Audrey B. Collins

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve the production
3 of confidential, proprietary, or private information for which special protection from
4 public disclosure and from use for any purpose other than prosecuting this litigation
5 would be warranted. These documents include confidential financial information,
6 sensitive business information, and potentially trade secrets, the disclosure of which
7 could harm the businesses involved. This overriding interest overcomes the right the
8 public may have to access this type of information, and, given the nature of the dispute
9 and the high-profile parties involved, there is a substantial probability that the parties'
10 interest will be prejudiced if they are not provided the protections afforded by this Order.
11 Accordingly, good cause exists, and the parties hereby stipulate to and petition the court
12 to enter the following Stipulated Protective Order. The parties acknowledge that this
13 Order does not confer blanket protections on all disclosures or responses to discovery and
14 that the protection it affords extends only to the limited information or items that are
15 entitled under the applicable legal principles to treatment as confidential. The parties
16 further acknowledge, as set forth in Section 10, below, that this Stipulated Protective
17 Order creates no entitlement to file confidential information under seal; Local Rule 79-5
18 sets forth the procedures that must be followed and reflects the standards that will be
19 applied when a party seeks permission from the court to file material under seal.

20 2. DEFINITIONS

21 2.1 Party: any party to this action, including all of its officers, directors,
22 employees, consultants, and retained experts (and their support staff).

23 2.2 Disclosure or Discovery Material: all items or information, regardless
24 of the medium or manner generated, stored, or maintained (including, among other
25 things, testimony, transcripts, or tangible things) that are produced or generated in
26 disclosures or responses to discovery in this matter.

27 2.3 "Confidential" Information or Items: information (regardless of how
28 generated, stored or maintained) or tangible things that qualify for protection under

standards developed under Fed. R. Civ. P. 26(c). It is limited to information that concerns or relates to a trade secret or other confidential research, development or commercial information the disclosure of which may cause significant harm to the competitive position of the producing party.

2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty would create a substantial risk of serious injury.

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.7. Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only.”

2.8 Protected Material: any Disclosure or Discovery Material that is designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

2.9 Counsel: Attorneys (as well as their support staffs) who are retained to represent or advise a Party in this action.

2.10 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its Counsel to serve as an expert witness or as a consultant in this action. This definition includes a professional jury or trial consultant retained in connection with this litigation. The expert witness or consultant may not be a past or a current employee of the Party (including any affiliates or related entities) adverse to the Party engaging the expert witness or consultant, or someone who at the time of retention is anticipated to become an employee of the Party (including any affiliates or related entities) adverse to the Party engaging the expert witness or consultant. Moreover, the expert witness or consultant may not be a current employee or anticipated to become an employee of any entity who is a competitor of the

1 Party adverse to the Party engaging the expert witness or consultant.

2 2.11 Professional Vendors: persons or entities that provide litigation
3 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
4 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and
5 their employees and subcontractors.

6 3. SCOPE

7 The protections conferred by this Stipulation and Order cover not only Protected
8 Material (as defined above), but also any information copied or extracted therefrom, as
9 well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
10 conversations, or presentations by parties or Counsel to or in court or in other settings
11 that might reveal Protected Material.

12 4. DURATION

13 Even after the termination of this litigation, the confidentiality obligations imposed
14 by this Order shall remain in effect until a Designating Party agrees otherwise in writing
15 or a court order otherwise directs.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.

18 Each Party or non-party that designates information or items for protection under this
19 Order must take care to limit any such designation to specific material that qualifies
20 under the appropriate standards. A Designating Party must take care to designate for
21 protection only those parts of material, documents, items, or oral or written
22 communications that qualify – so that other portions of the material, documents, items, or
23 communications for which protection is not warranted are not swept unjustifiably within
24 the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations
26 that are shown to be clearly unjustified, or that have been made for an improper purpose
27 (e.g., to unnecessarily encumber or retard the case development process, or to impose
28

unnecessary expenses and burdens on other parties), expose the Designating Party to sanctions.

If it comes to a Party's or a non-party's attention that information or items that it designated for protection do not qualify for protection at all, or do not qualify for the level of protection initially asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top or bottom of each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

A Party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order, then, before producing the specified documents, the

1 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
2 CONFIDENTIAL – ATTORNEYS' EYES ONLY") at the top or bottom of each page
3 that contains Protected Material. If only a portion or portions of the material on a page
4 qualifies for protection, the Producing Party also must clearly identify the protected
5 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
6 each portion, the level of protection being asserted (either "CONFIDENTIAL" or
7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

8 (b) for testimony given in deposition or in other pretrial or trial
9 proceedings, that the Party or non-party offering or sponsoring the testimony identify on
10 the record, before the close of the deposition, hearing, or other proceeding, all protected
11 testimony, and further specify any portions of the testimony that qualify as
12 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."
13 When it is impractical to identify separately each portion of testimony that is entitled to
14 protection, and when it appears that substantial portions of the testimony may qualify for
15 protection, the Party or non-party that sponsors, offers, or gives the testimony may
16 invoke on the record (before the deposition or proceeding is concluded) a right to have up
17 to 20 days after receipt of the official transcript of the testimony to identify the specific
18 portions of the testimony as to which protection is sought and to specify the level of
19 protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
20 ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are
21 appropriately designated for protection within the 20 days shall be covered by the
22 provisions of this Stipulated Protective Order.

23 Transcript pages containing Protected Material must be separately
24 bound by the court reporter, who must affix to the top of each such page the legend
25 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -- HIGHLY CONFIDENTIAL --
26 ATTORNEYS' EYES ONLY," as instructed by the Party or nonparty offering or
27 sponsoring the witness or presenting the testimony.
28

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they qualify as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. If material is appropriately designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Procedure for Challenging Designation. A Party that elects to initiate a challenge to a Designating Party’s confidentiality designation must do so by the procedure set forth in Local Rule 37. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the Court rules on the challenge, all

1 parties shall continue to afford the material in question the level of protection to which it
2 is entitled under the Producing Party's designation.

3 6.3 Procedure—Requesting Permission to Disclose HIGHLY
4 CONFIDENTIAL – ATTORNEYS' EYES ONLY Materials to Party. If a Party's
5 Counsel determines that his or her ability to provide the Party with a full and robust
6 representation in this matter has been hindered because Counsel is unable to disclose
7 information that has been designated HIGHLY CONFIDENTIAL – ATTORNEYS'
8 EYES ONLY to that Party, Counsel may seek permission to disclose the information to
9 that Party by the procedure set forth in Local Rule 37. Until the court rules on the
10 challenge, all parties shall continue to afford the material in question the level of
11 protection to which it is entitled under the Producing Party's designation.

12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

13 7.1 Basic Principles. A Receiving Party may use Protected Material that
14 is disclosed or produced by another Party or by a non-party in connection with this case
15 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
16 Material may be disclosed only to the categories of persons and under the conditions
17 described in this Order. When the litigation has been terminated, a Receiving Party must
18 comply with the provisions of section 11, below (FINAL DISPOSITION).
19 Protected Material must be stored and maintained by a Receiving Party at a location and
20 in a secure manner that ensures that access is limited to the persons authorized under this
21 Order.

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
23 otherwise ordered by the court or permitted in writing by the Designating Party, a
24 Receiving Party may disclose any information or item designated CONFIDENTIAL only
25 to:

26 (a) Receiving Party's Counsel of record in this action, as well as
27 employees of said Counsel to whom it is reasonably necessary to disclose the information
28 for this litigation;

(b) Board members, officers and directors of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) Other employees of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(e) the Court and its personnel;

(f) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(h) the author and recipients of the document or the original source of the information.

7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

(a) the Receiving Party's Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(e) the author and recipients of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Receiving Party is served with a subpoena, order, or other lawful court process issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax or email, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order. The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this

1 action to disobey a lawful directive from another court.

2 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

3 If a Receiving Party learns that, by inadvertence or otherwise, it has
4 disclosed Protected Material to any person or in any circumstance not authorized under
5 this Stipulated Protective Order, the Receiving Party must immediately (a) notify in
6 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to
7 retrieve all copies of the Protected Material, (c) inform the person or persons to whom
8 unauthorized disclosures were made of all the terms of this Order, and (d) request such
9 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is
10 attached hereto as Exhibit A.

11 10. FILING PROTECTED MATERIAL. Without written permission from the
12 Designating Party or a court order secured after appropriate notice to all interested
13 persons, a Party may not file in the public record in this action any Protected Material.
14 A Party that seeks to file under seal any Protected Material must comply with Local
15 Rule 79-5.

16 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by
17 the Producing Party, within sixty days after the final termination of this action, each
18 Receiving Party must return all Protected Material to the Producing Party. As used in
19 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
20 summaries or any other form of reproducing or capturing any of the Protected Material.
21 With permission in writing from the Designating Party, the Receiving Party may destroy
22 some or all of the Protected Material instead of returning it. Whether the Protected
23 Material is returned or destroyed, the Receiving Party must submit a written certification
24 to the Producing Party (and, if not the same person or entity, to the Designating Party) by
25 the sixty day deadline that identifies (by category, where appropriate) all the Protected
26 Material that was returned or destroyed and that affirms that the Receiving Party has not
27 retained any copies, abstracts, compilations, summaries or other forms of reproducing or
28 capturing any of the Protected Material.

1 Notwithstanding this provision, Counsel are entitled to retain an archival
2 copy of all pleadings, motion papers, discovery, transcripts, legal memoranda,
3 correspondence or attorney work product, even if such materials contain Protected
4 Material. Any such archival copies that contain or constitute Protected Material remain
5 subject to this Protective Order as set forth in Section 4 (DURATION), above.

6 12. PRIVILEGE LOG. The parties have agreed to the following procedures
7 with respect to privilege logs:

8 The parties are not required to log Privileged Materials dated on or after November
9 19, 2012 (the "cut-off date"). Information concerning documents or things otherwise
10 protected by the attorney-client privilege, work product immunity, or other privilege or
11 protection ("Privileged Materials") that were created on or after the cut-off date do not
12 need to be included on any privilege log. In addition, Privileged Materials created by or
13 on behalf of litigation counsel or exchanged with litigation counsel, regardless of their
14 date, do not need to be included on any privilege log.

15 13. MISCELLANEOUS

16 13.1 Right to Further Relief. Nothing in this Order abridges the right of
17 any person to seek its modification by the Court in the future.

18 13.2 Right to Assert Other Objections. By stipulating to the entry of this
19 Protective Order no Party waives any right it otherwise would have to object to
20 disclosing or producing any information or item on any ground not addressed in this
21 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground
22 to use in evidence of any of the material covered by this Protective Order.

23 13.3 Inadvertent Production of Privileged Documents. If a Party, through
24 inadvertence, produces any document or information that it believes is immune from
25 discovery pursuant to an attorney-client privilege, the work product privilege, or any
26 other privilege, such production shall not be deemed a waiver of any privilege. In such a
27 case of inadvertent production, the Producing Party must give written notice to the
28 Receiving Party, within ten court days after the Producing Party learns of its inadvertent

1 production, that the document or information produced is deemed privileged and that
2 return of the document or information is requested. Within five court days of receiving
3 such notice, the Receiving Party shall gather the original and all copies of the document
4 or information of which the Receiving Party is aware, in addition to any abstracts,
5 summaries, or descriptions thereof, and shall return the original and all such copies to the
6 Producing Party, and certify in writing that it has done so. Nothing stated herein shall
7 preclude a Party from challenging an assertion by the other Party of privilege or
8 confidentiality.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10
11 Dated: April 10, 2013

BROWNE GEORGE ROSS LLP

Peter W. Ross
Keith J. Wesley
Jonathan L. Gottfried

12
13
14 By: 

Peter W. Ross

Attorneys for Plaintiff Chroma Makeup
Studio LLC

15
16
17
18 Dated: April 10, 2013

GREENBERG TRAURIG, LLP

19
20
21 By: 

Nina D. Boyajian

Attorneys for Defendants Boldface Group, Inc.
and Boldface Licensing + Branding

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23
24 PURSUANT TO STIPULATION, IT IS SO ORDERED.

25
26 Dated: April 17, 2013


Hon. Patrick J. Walsh

United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print full name], of _____
[print full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States District
Court for the Central District of California in the case of Chroma Makeup Studio, LLC v.
Boldface Group, Inc. and Boldface Licensing Branding, Case No. CV12-09893 ABC-
(PJXx). I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action.

I hereby appoint _____ [print full name] of
_____ [print full address and telephone
number] as my California agent for service of process in connection with this action or
any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____